

**IN THE DRAWINGS**

Replacement Sheets 1-11 of drawings including text legends for FIGS. 1-11 are enclosed. Please substitute these Replacement Sheets for the drawings filed with the application. The specification language has been amended to reflect the changes to the drawings.

### **Remarks**

Claims 1-10 are pending in the application. New claims 11-15 have been added.

The title is objected to as not clearly indicative of the invention to which the claims are directed.

The Abstract is objected to because of the use of the phraseology "comprises" in lines 1, 2 and 4.

The drawings are objected to as lacking descriptive text legends for FIGS. 1-11.

Claims 1, 2, 6 and 7 are objected to for various informalities.

Claims 1 and 6 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,370,112 to Voelker (hereinafter "Voelker").

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay (US005809011A) in view of Soirinsuo (US006028861A).

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant (US006535489B1).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel

and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewriting to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

#### **Objection to the Drawing**

The drawings are objected to as lacking descriptive text legends for FIGS. 1-11.

Replacement Sheets 1-11 of the drawings including descriptive text legends for FIGS. 1-11 are enclosed.

Therefore, the objection should be withdrawn.

#### **Objection to the Specification**

The title is objected to as not clearly indicative of the invention to which the claims are directed. The title has been changed per the examiner's suggestion.

The Abstract is objected to because of the use of the phraseology "comprises" in lines 1, 2 and 4. The phraseology "comprises" has been removed.

Therefore, the objection should be withdrawn.

### **Objection to the Claims**

Claims 1, 2, 6 and 7 are objected to for various informalities. The claims have been amended to add clarity and address the examiner's concerns.

Regarding the objections of claims 1 and 6 per the examiner stating there is insufficient antecedent basis for the limitation "the first one of two incoming ports," and "the second one of the at least two incoming ports," it is respectfully submitted that any such ambiguity is resolved by the amendments to the claims.

Regarding the objection stating it is unclear whether the "period of time" and "data packet" of claims 2 and 7 are the same, it is respectfully submitted that any such ambiguity is resolved by the amendments to the claims.

Based on the preceding explanations and amendments to the claims, the Applicant respectfully requests the objections be withdrawn.

### **Double Patenting Rejection**

Claims 1 and 6 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of Voelker.

Since a double patenting rejection depends on the claims of the application, until Applicants have claims that are allowable but for the double patenting rejection, Applicants cannot evaluate the correctness of any suggested double patenting rejection. As such, Applicants also cannot determine any arguments that might be put forth against the suggested double patenting rejection. Therefore, as this double patenting rejection is premature, applicants will address such a ground of rejection once all other grounds of rejection are overcome.

**Rejection Under 35 U.S.C. 103(a)**

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo.

According to MPEP §2143, to establish a *prima facie* case of obviousness under §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Office Action failed to establish a *prima facie* case of obviousness, because the combination of Almay and Soirinsuo fails to teach or suggest all the claim elements.

**Claims 1-6**

The examiner believes the claimed “switch operable to wait/hold for a period of time any data packet originating from the source at the first one of the at least two incoming ports” is taught by Almay “deactivating/ceasing packets/cells **from subscriber A** at the first interface a-b for predetermined period (Fig. 2, line 56 to col. 3, line 10, emphasis added). This is incorrect. The claimed invention is directed toward preventing re-ordering of data packets by way of processes which occur entirely within the *receiving* switch or data port (“incoming ports”), whereas Almay requires involvement from the *transmitting* port or switch.

The integral involvement of the transmitting side of the network is taught by Almay with “the rerouting **starts by the initiating end** (i.e. in this case the node A) transmitting a message to the opposite end (to the subscriber interfaced unit of the subscriber B at the node B...), that message notifying of the rerouting to the route A-B” (col. 2, lines 57-62; Fig. 2; emphasis added). Hence, Almay clearly requires *transmitting*

a message from node A to node B, to notify node B of an intended route change. No such transmission is required for any reason in the claimed invention.

The claimed invention dynamically adapts itself to prevent data re-ordering based entirely on detections made at its receiving end. The specification provides “as path II is faster than path I, data packet 3 is received at port p2 of switch S2 before data packet 2 has arrived at port p1 of switch s2” (page 6, lines 5-7). The preceding indicates that data re-ordering is occurring, which prompts the invention to respond with “data packets arriving at port p1 are for a period of time discarded once data packets forwarded by S1 are received at port p2” (page 6, lines 8-10). The response at port p2 is automatic, and does not rely on a “message” from S1, as is required by Almay. Hence, the claimed invention also requires less steps than Almay to carry out its different function..

The OA suggests that Soirinsuo teaches the same manner of “discarding” as the claimed invention. This is not accurate. Soirinsuo teaches a method of receiving a request for, and performing a packet synchronized network routing path switchover. Soirinsuo does describe a form of “discarding” while performing a routing path switchover, but not for the purpose of preventing data re-ordering. Soirinsuo in fact makes no mention of preserving data packet order at all. Instead, discarding is only performed after a request (switchover request - Fig. 10) is made by the transmit side of the network to initiate the routing switchover process, and then packets are only discarded until a frame completed state is received (Fig. 10; col. 9, lines 64-67 – col. 10, lines 1-27).

Like Almay, all processes are initiated from the transmit side in Soirinsuo, as opposed to the receive side in the claimed invention. The single step of “discarding,” is not the claimed invention as a whole, regardless of whether its use had been taught in the same fashion or not. Soirinsuo performs an entirely different function, and teaches entirely different methodologies than the claimed invention. Soirinsuo teaches performing a network routing path switchover, having nothing to do with preventing data packet re-ordering. There is not a single instance of the need for maintaining data packet order, or any possible method for doing so, taught or suggested in Soirinsuo. Hence,

there is no plausible motivation to combine Soirinsuo with Almay, even if Soirinsuo and Almay did teach the claim elements they were purported to.

Therefore, Almay in view of Soirinsuo does not satisfy the requirements for a 35 U.S.C. 103(a) rejection according to MPEP §2143. The arguments of the office action against claim 6 are the same as those against claim 1, so the same response in defense of claim 1 from above also applies to claim 6, and does not need to be repeated.

In view of the above, the applicant respectfully requests the rejection of claims 1 and 6 be withdrawn.

#### **Claims 2-4 and 7-9**

Claims 2-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo as applied to claims 1 and 6 above.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant. Since the rejection under 35 U.S.C. 103 given Almay in view of Soirinsuo has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Merchant supplies that which is missing from Almay in view of Soirinsuo to render the amended independent claims obvious, these grounds of rejection cannot be maintained..

Therefore, the rejection should be withdrawn.

#### **Claims 5 and 10**

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Almay in view of Soirinsuo as applied to claims 1 and 6 above, and further in view of Merchant. Since the rejection under 35 U.S.C. 103 given Almay in view of Soirinsuo has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Merchant

supplies that which is missing from Almay in view of Soirinsuo to render the amended independent claims obvious, these grounds of rejection cannot be maintained..

Therefore, the rejection should be withdrawn.




**Conclusion**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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Eamon J. Wall  
Registration No. 39,414  
Attorney for Applicants

PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
Telephone: 732-530-9404  
Facsimile: 732-530-9808